



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT
803 FRONT STREET
NORFOLK, VA 23510-1011

October 26, 2020

Northern Virginia Regulatory Section
NAO-2006-07410 (Broad Run/Horsepen Run/Cub Run)

Mr. Gregg Wollard
Metropolitan Washington Airports Authority
45045 Aviation Drive, 3rd Floor
Dulles, Virginia 20166

Dear Mr. Wollard:

This letter is in reference to a request on your behalf from Coastal Resources, Inc., for a delineation confirmation and jurisdictional determination for waters of the U.S. (including wetlands) on an approximately 1400-acre study area northeast of the intersection of John Mosby Highway (Route 50) and Loudoun County Parkway (Route 606) in Loudoun County, Virginia. The project is called Western Solar Development.

The enclosed exhibit entitled "Wester Solar Development, Metropolitan Washington Airports Authority, Appendix B: Key Sheet: Waters of the U.S. (including Wetland) Delineation Map, Sheet 1 of 35, Loudoun County, Virginia" dated August 2020, provides the locations of waters and/or wetlands on the properties listed above. The basis for this delineation includes application of the Corps' 1987 Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont and the positive indicators of wetland hydrology, hydric soils, and hydrophytic vegetation and the presence of an ordinary high water mark.

Discharges of dredged or fill material, including those associated with mechanized land clearing, into waters and/or wetlands on this site may require a Department of the Army permit and authorization by state and local authorities including a Virginia Water Protection Permit from the Virginia Department of Environmental Quality (DEQ), a permit from the Virginia Marine Resources Commission (VMRC) and/or a permit from your local wetlands board. This letter is a confirmation of the Corps preliminary jurisdiction for the waters and/or wetlands on the subject property and does not authorize any work in these areas. Please obtain all required permits before starting work in the delineated waters/wetland areas.

This is a preliminary jurisdictional determination and is therefore not a legally binding determination regarding whether Corps jurisdiction applies to the waters or wetlands in question. Accordingly, you may either consent to jurisdiction as set out in this preliminary jurisdictional determination and the attachments hereto if you agree with the determination, or you may request and obtain an approved jurisdictional determination.

This preliminary jurisdictional determination and associated wetland delineation map may be submitted with a permit application.

Enclosed is a copy of the "Preliminary Jurisdictional Determination Form". Please review the document, sign, and return a copy within 30 days of receipt and keep one for your records. This delineation of waters and/or wetlands is valid for a period of five years from the date of this letter unless new information warrants revision prior to the expiration date.

If you have any questions, please contact me at ron.h.stouffer@usace.army.mil or 757-201-7124.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Stouffer", with a long horizontal flourish extending to the right.

Ronald H. Stouffer, Jr.
Environmental Scientist
Northern Virginia Regulatory Section

Enclosures

cc: Coastal Resources, Inc.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION:

A. COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): October 26, 2020

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Metropolitan Washington Airports Authority
Attn: Mr. Gregg Wollard
45045 Aviation Drive, 3rd Floor
Dulles, Virginia 20166

C. DISTRICT OFFICE: Norfolk District (CENAO-WRR) FILE NUMBER: NAO-2006-07410-rhs
FILE NAME: Western Solar Development

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State: VIRGINIA County/parish/borough: Loudoun Town/City: n/a

Center coordinates of site:

Latitude: 38.9416° N Longitude: -77.4866° W

Universal Transverse Mercator: n/a

Name of nearest waterbody: Broad Run/Horsepen Run/Cub Run

Identify (estimate) amount of waters in the review area:

Non-wetland waters: ± 34,453 linear feet, 14.98 acres

Cowardin Class: R4, R6, POW

Stream Flow: n/a

Wetlands: ± 78.9 acres

Cowardin Class: PFO, PSS, PEM

Name of any water bodies on the site that have been identified as Section 10 waters: Tidal: n/a

Non-Tidal: n/a

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination Date: October 26, 2020
☐ Field Determination Date:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make

an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

3. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA:

Data reviewed for preliminary JD (check all that apply) - checked items should be included in case file and, where checked and requested, appropriately reference sources below.

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps:

☐ Corps navigable waters' study:

☒ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☒ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: Arcola/Herndon 1:24,000

☒ USDA Natural Resources Conservation Service Soil Survey.

Citation: Loudoun County

☒ National wetlands inventory map(s). Cite name: Loudoun County

☐ State/Local wetland inventory map(s):

☒ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation:

(National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): in report

Or ☒ Other (Name & Date): in report

☒ Previous determination(s):

File no. and date of response letter: 2006-07410, October 4, 2011

☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.



Signature
Regulatory Project Manager

October 26, 2020

Date



Signature of person requesting
Preliminary JD
(REQUIRED, unless obtaining the signature
is impracticable)

October 27, 2020

Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Metropolitan Washington Airports Authority		File Number: 2006-07410	Date: 26 Oct 2020
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers, Norfolk District
Northern Virginia Field Office (CENAO-WRR-N)
Attn.: Mr. Ronald H. Stouffer, Jr.
18139 Triangle Plaza, Suite 213
Dumfries, VA 22026

757-201-7124 or email ron.h.stouffer@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

United States Army Corps of Engineers
North Atlantic Division (CENAD-PD-OR)
Attn: Mr. James Haggerty, Regulatory Program Manager
301 General Lee Avenue
Fort Hamilton Military Community
Brooklyn, NY 11252
347-370-4663

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: